

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Evelyn Stubbs,

Bankruptcy Case No.: 10-80950

Soc. Sec. No. xxx-xx-4762

Mailing Address: 619 Old Oxford Highway,
Durham, NC 27704-

Debtor.

Evelyn Stubbs,

Plaintiff, A.P. No.: 10-09082

Household Realty Corporation,

Defendant.

MOTION TO JOIN CHAPTER 13 TRUSTEE AS PARTY PLAINTIFF

NOW COMES the Plaintiff, by and through her undersigned attorney, and hereby moves to join Richard M. Hutson, II, the Chapter 13 Trustee in the Plaintiff's Chapter 13 case, as a party plaintiff and state in support of the motion the following:

1. The Plaintiff is the Debtor in the above-captioned chapter 13 bankruptcy case, filed on May 28, 2010, and Richard M. Hutson, II is the duly appointed Chapter 13 Trustee.
2. On September 8, 2010, the Debtor filed her Complaint to Determine Validity and Extent of Lien (the "Complaint").
3. The Complaint asserts avoidance claims pursuant to 11 U.S.C. § 544, which if successful, would provide a benefit to the bankruptcy estate and the Debtor.
4. Rule 20 of the Federal Rules of Civil Procedure, as incorporated by Rule 7020(a) of the Federal Rules of Bankruptcy Procedure provides that additional parties may be joined as

plaintiffs if “they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all plaintiffs will arise in the action.”

5. Alternatively, Rule 19(a)(1) of the Federal Rules of Civil Procedure, as incorporated by Rule 7019 of the Federal Rules of Bankruptcy Procedure provides that a party “A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
 - a. in that person's absence, the court cannot accord complete relief among existing parties; or
 - b. that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - i. as a practical matter impair or impede the person's ability to protect the interest; or
 - ii. leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
6. Upon information and belief, the Chapter 13 Trustee is subject to service of process.
7. Upon information and belief, joinder of the Chapter 13 Trustee will not deprive the court of subject-matter jurisdiction.
8. Upon information and belief, in that absence of the Chapter 13 Trustee, the court may not be able to accord complete relief among existing parties.
9. Upon information and belief, the Chapter 13 Trustee could claim an interest relating to the subject of the action, i.e. in that voiding or avoidance of Defendant’s security interest would benefit the bankruptcy estate.

10. Upon information and belief, disposing of the action in the absence of the Chapter 13 Trustee may:
- i. as a practical matter impair or impede the Chapter 13 Trustee's ability to protect the interest; and/or
 - ii. leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
11. The Debtor's Complaint, in seeking avoidance of the Deed of Trust purportedly held by Household Realty Corp. has asserted a claim of relief under 11 U.S.C. §547. Under the facts presented, this claim for relief may arguably only be brought by the Chapter 13 Trustee. Alternatively, the Debtor/Plaintiff seeks a determination that the purported lien is *void ab initio*.
12. The questions of law or fact giving rise to the Complaint are common to both the Debtor and the Trustee. Specifically, the Complaint details a defect in the legal description and chain of title of the Defendant's purported lien which, if proven, would permit avoidance of the Defendant's Deed of Trust. Accordingly, the Debtor seeks to have the Chapter 13 Trustee joined in the Complaint as a party plaintiff.

WHEREFORE, the Debtor/Plaintiff prays that this Court grant the Motion to join the Chapter 13 Trustee as a party plaintiff in this action any other such other relief which the court deems proper. The Debtor/Plaintiff further request that, upon a finding that additional parties are required to this action, that the court permit 30 days from any such order to allow further joinder of any necessary parties.

Respectfully submitted this 18th day of June, 2011.

/s/ Edward C. Boltz

Edward C. Boltz

Attorney for the Plaintiff/Debtor

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CERTIFICATE OF SERVICE

I, Renee Nolte certify that service of the **MOTION TO JOIN CHAPTER 13 TRUSTEE AS PARTY PLAINTIFF** was made on June 18, 2011, by electronic notice on the following parties:

Richard M. Hutson, II
Chapter 13 Trustee

Neale T. Johnson
Attorney for Defendant

Michael West
Bankruptcy Administrator

C. Marshall Lindsay
Attorney for Defendant

Matthew Underwood
Attorney for Defendant

and also by **first class mail** upon the following parties:

Richard M. Hutson, II
Chapter 13 Trustee
Post Office Box 3613
Durham NC 27702

Neale T. Johnson
Attorney for Defendant
525 North Tryon Street
Suite 1400
Charlotte, NC 28202

Evelyn Stubbs
619 Old Oxford Highway
Durham, NC 27704

C. Marshall Lindsay
Attorney for Defendant
525 North Tryon Street
Suite 1400
Charlotte, NC 28202

Matthew Underwood
Attorney for Defendant
5121 Parkway Plaza Drive
Suite 300
Charlotte, NC 28217

This 20th day of June, 2011.

/s/ Renee Nolte

The Law Offices of John T. Orcutt.